IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE BILAL NAZKI
and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 17580 of 1997

Between:
Smt. P.Suryakantham W/o. Late Ramana Rao,
R/o. Vishakapatnam.

..... PETITIONER

AND

1 Deputy Tansport Commissioner and Secretary
Regional Transport Authority, Vishakapatnam.
2 Motor Vehicle Inspector,
Vishakapatnam.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or certiorari and call for the entire records in R.No.17910/A3/95 Dt.29-5-97 from the file of the Deputy Transport commissioner and Secretary :, R.T.A., Visakhapatnam and quash the demand there under demanding payment of Rs.30,135/- purporting to be the difference of tax for the quarter ending 30-9-95 on the petitioners contract carriage vehicle bearing Registration No. TCB 6690, as arbitrary, malafide, illegal and without Jurisdiction, and issue any other appropriate writ order or direction and grant such other necessary reliefs.

For the Petitioner: MR.K.N.JWALA, Advocate

For the Respondent No.: GP FOR TRANSPORT

The Court Made the Following :

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

A demand notice dt. 29.5.1997 is challenged by this writ petition. According to the demand notice, the Motor Vehicles Inspector, Visakhapatnam checked the contract carriage bearing registration No. TCB 6690 at 6.30 P.M. on 3.7.1995 while it was proceeding from steel plant to Visakhapatnam with sixty steel plant employees and the following allegations were levelled against the petitioner,

(1) No contract carriage permit to ply on the route steel plant to Visakhapatnam;

(2) A.P. Tax for the Q.E. 30.9.1995 at the rate fo contract carriage not paid;

(3) No registration number on the side of the vehicle body;

(4) There are 10 excess persons in the vehicle;

Thereafter the impugned notice was issued to the registered owner-petitioner to show cause as to why she should not be asked to pay the difference of tax at the rate of 625/- per seat. The petitioner in her explanation submitted that the Asst. Motor Vehicles Inspector checked her bus while it was traveling from Chodavaram without any passengers and the passengers who were tourists were left on 2.7.1995, the vehicle had not plied as a contract carriage and hence requested to drop further action in the matter. According to the petitioner, it was not a case of vehicle which was being run without a permit, at best the conditions of the permit were violated and for violating the conditions of permit the rate of tax could not have been changed.

In the counter-affidavit it is stated that the registered owner was carrying 60 passengers in her vehicle as a contract carriage without any permit and without paying the tax. The vehicle had a basic permit which was valid up to 29.4.1998. The registered owner used to obtain special temporary permits by paying pro-rata tax. She obtained a special temporary permit which was valid up to 2.7.1995 and she had not obtained any special permit for the further period and also had not paid tax, but on 3.7.1995 at 6.30 P.M. the vehicle was proceeding from steel plant to Visakhapatnam, when it was checked and detained. Even according to the counter-affidavit, the petitioner had a basic permit which was valid up to 29.4.1998. She was, however, required to obtain special permits which she had not obtained on the day the vehicle was checked, but that does not alter the basic fact that it was a vehicle which had a valid permit. The matter was considered by a larger Bench of this Court reported in *L. Royal Reddy and others Vs. Government of A.P.* [1] and it held in para-25 of the majority judgment,

> "From the decisions referred to in support and against the writ petitioners by the learned Senior Counsel for the petitioners and the learned Additional Advocate General for the State of Andhra Pradesh it must be held that tax is levied on the basis of class of vehicles. Motor Vehicle tax is compensatory in nature and that any deviation or use of the vehicle would not attract additional tax unless statute itself provides a special category. There has been no alteration to the vehicle nor any special category is created in the schedule to levy and collect additional tax

or surcharge or advance tax at higher rate. Tax is to be levied as per the schedule fixed in terms of the classification of the vehicle being used."

Following the same judgment, we allow the writ petition and quash the impugned demand notice. No order as to costs.

Dt. 29.6.2004 ASST. REGISTRAR

KR

True Copy

Section Officer

To
1 Deputy Tansport Commissioner and Secretary
Regional Transport Authority, Vishakapatnam.
2 Motor Vehicle Inspector,
Vishakapatnam.
3. 2 CCs to G.P. for Transport, High Court Buildings, Hyderabad.
4. 2 CD copies

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[1] 2004 (2) ALD 225 (LB)